UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF ILLINOIS

MARK W. WANKEL, and **DEBRA WANKEL,** **Plaintiffs,** **v.** **SOUTHERN ILLINOIS BANCORP, INC.,** **Serve at:** **Registered Agent** **Alvin Fritchle** **1405 Roser Drive** **Carmi, Illinois 62821** **REGIONS BANK,** **Serve at:** **CSC Lawyers Incorporating SVC Inc.** **150 S. Perry St.** **Montgomery, Alabama 36104** **MITCHELL FERREE,** **Serve at:** **599 N. County Road 325 W** **Sullivan, Indiana 47882-7174** **ALVIN FRITSCHLE,** **Serve at:** **1405 Roser Drive** **Carmi, Illinois 62821-2228** **DONNA HODGSON,** **Served at:** **137 N. Drive** **Mt. Carmel, Illinois 62863-2817**	)	**Case No.: 3:06CV619 JPG** **Jury Trial Demanded**

NIKKI ROSER,)
)
Served at:)
1527 County Road 500 E)
Enfield, Illinois 62835-2213)
)
RON ABSHER,)
)
Served at:)
841 Il Hwy 14)
Carmi, Illinois 62821-4926)
)
JAMES ZIEREN,)
)
Served at:)
Rural Route 1)
Carmi, Illinois 62821)
)
JAMES T. GAINES, and)
)
Served at:)
609 Evergreen Lane)
Carmi, Illinois 62821-1923)
)
GARY FINCH,)
)
Served at:)
311 S. 3rd Street)
Carmi, Illinois 62821-1444)
)
Defendants.)
)

COMPLAINT

Jurisdiction

1. This action arises under the Racketeer Influenced and Corrupt Organizations Act of 1970 ("RICO"), 18 U.S.C. § 1961 *et seq*., and the laws of the State of Illinois. The Plaintiffs seek to recover compensatory and punitive damages sustained as a result of the Defendants' conduct, along with the costs of this suit, interest and reasonable attorney's fees. The Court's jurisdiction is invoked under 18 U.S.C. § 1964(c), 28 U.S.C. § 1331, and 28 U.S.C. § 1367. A

trial by jury is hereby demanded.

Parties

2. Plaintiff Mark W. Wankel resides at 3 Lakeview Lane, Mt. Carmel, Illinois, and was a guarantor and primary obligor on certain notes and obligations referred to herein.

3. Plaintiff Debra Wankel resides at 3 Lakeview Lane, Mt. Carmel, Illinois, and was a primary obligor on certain notes and obligations referred to herein.

4. Defendant Southern Illinois Bancorp, Inc. is the parent holding company of, and owns, First National Bank of Carmi ("First Bank"), a bank and trust company existing under the laws of the State of Illinois, having offices in White County, Illinois, as well as other counties in Illinois and Indiana.

5. Defendant Regions Bank is the banking subsidiary of Regions Financial Corp., which is the survivor of a merger between Regions Financial Corporation and Union Planters Corp., which is the parent holding company of Union Planters Bank ("Union Planters"), and a successor via merger to the liabilities of Union Planters.

6. Defendant Mitchell Ferree is a resident of the State of Indiana, and at all times relevant hereto was an agent, servant and employee of Defendant Union Planters.

7. Defendant Alvin Fritschle is a resident of the State of Illinois and at all times relevant hereto was the President and agent, servant and employee of Defendant First Bank.

8. Defendant Nikki Roser is a resident of the State of Illinois and at all times relevant hereto was the Chief Financial Officer and agent, servant and employee of Defendant First Bank.

9. Defendant Donna Hodgson is a resident of the State of Illinois and at all times relevant hereto was the Manager of First Bank's Mt. Carmel Financial Center and agent, servant

and employee of Defendant First Bank.

10. Defendant Ron Absher is a resident of the State of Illinois and at all times relevant hereto was a Director of, and Chairman of the Loan Committee for, and agent and servant of Defendant First Bank.

11. Defendant James T. Gaines is a resident of the State of Illinois and at all times relevant hereto was a Director and agent and servant of Defendant First Bank.

12. Defendant James Zieren is a resident of the State of Illinois and at all times relevant hereto was a Director and agent and servant of Defendant First Bank.

13. Defendant Gary Finch is a resident of the State of Illinois and at all times relevant hereto was a Director and agent and servant of Defendant First Bank. (The Defendants referenced in paragraphs 6-13 shall be referred to collectively as the "Individual Defendants" and individually as the respective "Individual Defendant").

14. All of the acts and omissions hereinafter described, made and taken by the defendants First Bank and Union Planters were made and taken by said defendants' agents, servants, and employees.

15. Venue is proper in this district and this court has personal jurisdiction over the Defendants, as Defendants are found within, have agents within, or are doing business within, and transact business in this district, and the activities of the Defendants which give rise to the claims for relief occurred in this district.

16. At all times relevant hereto, Kevin Williams, ("Williams") a certified public accountant, owned and operated American Auto Centers, Inc. ("American Auto"), a retail used automotive sales business organized and existing under the laws of the State of Illinois.

17. On or about September 4, 2003, Williams opened a checking account or checking accounts for American Auto with Defendant First Bank, at its Mt. Carmel Financial Center.

18. On or about August of 2002**,** Williams opened a checking account or checking accounts for American Auto with Defendant Union Planters.

Count I: RICO

Description of the Enterprise

19. First Bank, Union Planters, the Individual Defendants, American Auto Centers, Inc., and Kevin Williams constitute an "enterprise" as that term is defined in 18 U.S.C. § 1961, engaged in activities which affect interstate commerce. Such activities in and affecting interstate commerce include, *inter alia*, the borrowing and lending of money. All subsequent references to the enterprise shall refer to the enterprise described in this paragraph 19.

Description of Williams' Check Kiting Scheme

20. From an indeterminate time in September 2003 until March 10, 2004, Williams, by and through American Auto and its agents, was kiting checks in amounts between $50,000 and $150,000 from his First Bank and Union Planters American Auto accounts.

21. On or about March 18, 2004, at the latest, Union Planters discovered that substantial check kiting was occurring in its American Auto account.

22. On or about March 18, 2004, First Bank received a facsimile from the Federal Reserve advising it that Union Planters was returning $444,905.00 in checks drawn on American Auto's First Bank account for insufficient funds.

23. On or about March 18, 2004, at the latest, First Bank determined that substantial check kiting was occurring in its American Auto account.

24. On or about March 19, 2004, First Bank returned $651,867.78 in checks written on the First Bank account to Union Planters, which sum included $436,315 in checks that Union Planters had challenged as not being returned in a timely manner.

25. Over the next several days First Bank and Union Planters returned multiple checks in the respective American Auto accounts.

26. As a result of the check kiting scheme, First Bank sustained an overdraft of $360,726.28, Union Planters sustained an overdraft of approximately $470,000, and there were $436,315 in checks in dispute between the two banks.

27. First Bank, Union Planters, the Individual Defendants, Williams and other known and unknown persons, being persons employed by and associated with those in the criminal enterprise described above and who either were leaders of the enterprise who directed other members of the enterprise in carrying out unlawful and other activities in furtherance of the conduct of the enterprise's affairs or who participated in unlawful and other activities in furtherance of the conduct of the enterprise's affairs, unlawfully and knowingly did direct and participate in, directly and indirectly, the conduct of the affairs of the enterprise, which enterprise was engaged in, and the activities of which affected, interstate and foreign commerce, through a pattern of racketeering activity, as that term is defined in Title 18, United States Code, Sections 1961(1) and 1961(5), and as set forth below.

Predicate Acts

28. On or about March 26, 2004, at 602 Market Street, Mt. Vernon, Illinois, Williams explained to Mark Wankel that an employee of American Auto, named Sue Rymer, had embezzled some money from American Auto's bank accounts, and some overdrafts had to be covered.

a. Williams assured Mark Wankel that the overdrafts were "no big deal."

b. Williams informed Mark Wankel of the Union Planters overdraft, and assured him that there was "plenty of equity" in the American Auto account to cover the same.

c. Williams knew that there was insufficient equity in the American Auto account to cover the overdraft.

d. Williams knew that he was kiting checks and that Sue Rymer was not embezzling money from American Auto without his knowledge or involvement.

e. Williams made these statements with the intent that Mark Wankel would rely on them.

29. On March 26, 2004, Mark Wankel, relying on the statements in the preceding paragraph, gave a second mortgage on a farm that he owned in Cass County, Illinois to the Farm Credit Services to receive a $470,000 loan that he would use to pay the deficiency with Union Planters.

30. On or about March 29, 2004, Williams met with Defendant Alvin Fritschle at his office at First Bank's Carmi, Illinois branch.

a. Williams indicated to Mr. Fritschle that the American Auto deficiency with First Bank was going to be more than $250,000.

b. Williams indicated to Mr. Fritscle that he was not going to be able to pay the deficiency on his own.

c. Williams indicated to Mr. Fritscle that he and Mark Wankel were going to be forming a business partnership and that he and Mark Wankel would both guarantee the loans, as well as encumber certain property to cover the loans.

d. Defendant Fritschle asked Williams to return with financing statements for himself, American Auto, his other businesses, and Mark Wankel.

31. On or about March 30, 2004, Williams returned to Mr. Fritschle's office with financing statements for himself, Mark Wankel, and various entities owned by Williams.

32. On or about March 31, 2004, a meeting of the Loan and Investment Committee of First National Bank of Carmi was held at First Bank.

a. Present at that meeting were the Individual Defendants Messrs. Fritschle, Absher, Zieren, and Gaines.

b. At that meeting, Mr. Fritschle indicated that the account of American Auto had an overdraft in the amount of $360,000 as a result of Williams' check kiting.

c. At that meeting, Fritschle indicated that Williams has indicated that he would not be able to cover the overdraft and requested a loan in that amount, but that if First Bank extended a loan to Williams to cover the overdraft, Mark Wankel would guarantee the same.

33. On or about April 1, 2004, Williams and Union Planters persuaded Mark and Debra Wankel take out a loan to cover $400,000 of its deficiency as a result of Williams' check kiting. In connection with the loan:

a. Union Planters, through its agent, Bruce Reihnart, had Mark and Debra Wankel execute a promissory note for $400,000 without first disclosing to them that the proceeds of the loan would be used to cover its deficiency caused by Williams' check kiting, of which Union Planters had actual knowledge, representing instead that the proceeds would be used as an investment into the businesses of Williams and his wife;

b. Union Planters, through its agent, Bruce Reinhart, had Mark and Debra Wankel execute a hold harmless agreement, faxed to Illinois from a number with an Evansville, Indiana prefix, advising that Mark and Debra Wankel should conduct an investigation into the entity which they were lending money, but while failing to disclose that it was aware that the funds were being used to cover a deficiency arising from Williams' check kiting;

c. Union Planters made the representations in sub-paragraph a. of this paragraph, knowing they were false, with the intent that Mark and Debra Wankel would rely on them, and they did so justifiably rely to their detriment, causing them to incur a $400,000 debt, and fraudulently causing them to execute a hold harmless agreement.

34. On or about April 6, 2004, Alvin Fritschle had telephone conversations with Ron Absher, James Zieren and Gary Finch, and they discussed the American Auto "check kiting".

a. Messrs. Fritschle, Absher, Zieren, and Finch found the "[c]onsensus was to get Mark Wankel's signature ASAP before he changed his mind."

b. In order to defraud Mark Wankel and cause him to personally cover American Auto's debt to First Bank, Messrs. Fritschle, Absher, Zieren, and Finch, acting as agents of and in cooperation with First Bank "[p]repared notes and sent to Donna [Hodgson] to get signatures[,]" from Mark Wankel without first informing Mark Wankel of the check kiting.

35. On or about April 7, 2004, Williams made a promissory note for $360,726.28 in favor of First Bank (the "Note"), for which it loaned him the money to cover the overdraft in First Bank's American Auto account. The Note was dated April 2, 2004. A true and correct copy of the Note is attached hereto and incorporated herein as Exhibit A.

36. On or about April 7, 2004, Mark Wankel guaranteed the Note ("the Guarantee"). The Guarantee was dated April 2, 2004. A true and correct copy of the Guarantee is attached hereto and incorporated herein as Exhibit B.

37. On or about April 7, 2004, Defendant Fritschle presented a report to First Bank's Directors Loan Committee on Williams and American Auto. The committee ratified the loan to Williams and instructed First Bank's management to file a criminal referral form with the US Attorney's Office.

38. On or about April 14, 2004, Mitch Ferree and Union Planters, by and through its agents, persuaded Mark Wankel and Debra Wankel to wire $470,000 from Fifth Third Bank of Cincinnati, Ohio to FNB of Allendale, Mount Carmel, Illinois, further credit to Wabash Savings Bank to cover check kiting deficiencies at Union Planters.

39. On or about April 16, 2004, Nikki Roser spoke via telephone with Mitch Ferree with Union Planters.

a During that call, Mr. Ferree and Nikki Roser discussed American Auto's and Williams' check kiting.

b. During that call, Mr. Ferree had requested that First Bank relax its efforts to collect from Mark Wankel out of a concern that First Bank was going to "rock the boat too much" and Mark Wankel would "back out and we would both lose money on the situations."

40. On or about April 21, 2004, Mr. Fritschle's reported to the Board of Directors of First Bank that First Bank would "back off" on its collection efforts with regard to Messrs. Williams and Wankel until May 2, 2004, the date when Mark Wankel had arranged to pay Union Planters the proceeds from the aforementioned Farm Credit Services mortgage loan of $470,000 to cover the deficiency with Union Planters.

41. On July 23, 2004, Alvin Fritschle caused Mark Wankel to purchase the Note. This purchase, in furtherance of the conspiracy hereinafter described, had been telephonically approved by Messrs. Absher, Fritschle, and Zieren.

42. On July 23, 2004, the First Bank's Loan Committee ratified Mark Wankel's purchase of the Note.

43. On July 23, 2004, Defendants First Bank and Alvin Fritschle persuaded Mark Wankel to enter into a Loan Participation Agreement (the "Agreement"), between Mark Wankel and First Bank, through Alvin Fritchle. The Agreement is attached hereto and incorporated herein as Exhibit C.

44. The Agreement, in paragraph 6(A)(i), provides that:

> The Originating Bank has provided the Purchaser with copies of all relevant credit and other information currently in the possession of the Originating Bank, that were used by the Originating Bank as basis of and for its decision to make a loan to the borrower[.]

45. The statement referred to in paragraph 44 was false and known to be false when made, as Mr. Fritschle and First Bank were aware of, and had discussed at length, the check kiting scheme described above, and did not provide said information to Mr. Wankel.

46. That Agreement provides in paragraph 6(A)(iv) that: "the Loan has not been classified on the books of the Originating Bank[.]"

47. The statement referred to in paragraph 46 was false and known to be false when made, as Mr. Fritschle and First Bank had previously classified the loan as "a sub-standard loan that we would not normally make, but did out of necessity to cover a difficult situation."

48. That Agreement provides, in paragraph 8(a)(i), that First Bank would notify Mr. Wankel of any change in the financial condition of the borrower which may have a material adverse effect on the continuation of payments under the loan or the loan's ultimate

collectibility.

49. The statement referred to in paragraph 48 was false and known to be false when made, as Mr. Fritschle and First Bank had written a letter to Williams on July 26, 2004, on which Mr. Wankel was not copied, that refers to Williams' "decline in financial position."

50. The statements in made in paragraphs 44, 46, and 48 were made with the intent that that Mark Wankel would rely upon them and enter into the loan participation agreement, he did so rely, he was justified in doing so, given Defendants' acts herein described, and he was consequently damage as a result thereof.

51. The Defendants have made multiple, varied, and continuing attempts obtain money from the Plaintiffs, up to August 8, 2006.

RICO Offense 1: Bank Fraud

52. In an effort to persuade Mark Wankel to cover American Auto and William's deficiency from the check kiting scheme, Union Planters, First Bank, and the Individual Defendants knowingly advanced a scheme to defraud Mark Wankel by false pretenses causing him to:

a. Give a mortgage on his farm to obtain a loan to cover the deficiencies described above at Union Planters in the amount of $470,000;

b. Pay the proceeds of the loan to Union Planters;

c. Guarantee a loan originating at First Bank to cover the deficiencies mentioned above at First Bank in the amount of $360,726.28;

d. Purchase the Note related to the aforementioned loan on July 23, 2004.

e. Make various interest and other payments to date.

53. Prior to the scheme to defraud Mr. Wankel, the money involved was under the

custody and control of various financial institutions, including the Fifth Third Bank, Cincinnati Ohio, First Bank and Union Planters.

54. Defendants executed a scheme or artifice to obtain moneys under the custody of a financial institution by means of the false and fraudulent pretenses, representations and promises described above, which constitutes bank fraud under 18 U.S.C. § 1344. This is so even through the owners of the money in the custody of the financial institution were Mark and Debra Wankel, and not the respective financial institutions.

55. Each instance described above of the Defendants' knowing execution of a scheme to obtain the money of Mark and Debra Wankel, which was under the custody or control of financial institutions, by means of false or fraudulent pretenses, representations, or promises, violates 18 U.S.C. § 1344 (2), and constitutes a separate offense.

RICO Offense 2: Mail Fraud

56. Williams' statements to Mr. Wankel to induce him to make the Guarantee and to cover the deficiencies, as well as purchase the Note, and First Bank's, Union Planters', and the Individual Defendants' actions to enable and facilitate such misrepresentations, constitute fraud under Illinois Law.

57. The Defendants' use of the United States mail for purposes of effectuating or in furtherance of the above described fraud, includes:

a. A July 26, 2004 letter to Williams from Alvin D. Fritschle informing Williams of and in connection with First Bank's sale of the Note to Mark Wankel.

b. The mailing of correspondence and other documents related to the check kiting mentioned herein between Union Planters and First Bank by and between March 16 and March 18, 2004.

c. The mailing of payment past due notices and other correspondence to Mark Wankel, though the month of July 2006.

58. Each use of the mails in furtherance of the Defendants' and the other individual Defendant's scheme and artifice to defraud the Plaintiffs and in furtherance of the criminal acts set forth herein violates 18 U.S.C. § 1341 and constitutes a separate offense.

RICO Offense 3: Wire Fraud

59. The Defendants, for the purposes of executing the scheme to defraud the Plaintiffs, and in furtherance of the criminal acts set forth herein, transmitted and caused to be transmitted communications by means of wire including, without limitation:

a. The April 1 facsimile from Union Planters in Evansville, Indiana to Illinois, described above.

b. The April 6 and July 23, 2004 telephone calls among and between Messrs. Fritschle, Absher, Zieren, and Finch, described above.

c. The April 16, 2004 telephone call between Ms. Roser and Mr. Ferree, described above.

d. On April 14, 2004, $469,464 was wired from Cincinnati, Ohio to First National Bank of Allendale, Mt. Carmel, further credit to Mark Wankel's account with Wabash Savings Bank, representing the proceeds of the second mortgage on Mark Wankel's farm, given to obtain a loan to cover the deficiencies at Union Planters.

60. Continuing through the week of August 8, 2006, the Defendants have repeatedly used the wires to attempt to collect money from Plaintiffs, up to and including a call from Jason Kruse on behalf of Union Planters, from a number with an Evansville, Indiana prefix, to Mark

Wankel at his office in Mt. Vernon, Illinois, on or around August 8, 2006, and a call from Donna Hodgson from First Bank to Mark Wankel the preceding week.

61. Each use of the wires in furtherance of the Defendants' scheme and artifice to defraud the Plaintiffs violates 18 U.S.C. § 1343 and constitutes a separate offense.

Damages

62. The actions described in this Count caused Mark Wankel to incur additional consequential damages in the approximate amount of $126,354 between April 15-May 6, 2004; $36,354 for payments made to Union Planters, $50,000 for payments made to American Auto, $30,000 for additional payments made to American Auto, and $10,000 for payments made to Wabash Communications.

63. As a direct result of the scheme to defraud Mark and Debra Wankel, the Plaintiffs have been damaged, including those damages mentioned in the preceding paragraph, in the approximate amount of $1,357,071.28, plus interest charged, accrued, and or paid.

64. The use of the mails and wires for the purposes of effectuating the aforesaid scheme to defraud Plaintiffs, including fraud involving money under the control of a financial institution, which occurred on more than one occasion in the last ten years, and continuing on for more than two years, constitutes a continuing pattern of racketeering activity in violation of 18 U.S.C. § 1962, for which treble damages, costs of suit and attorneys' fees may be sought under 18 U.S.C. § 1964(c).

65. The Individual Defendants, First Bank, and Union Planters, in violation of 18 U.S.C. § 1962(a), used income derived from a pattern of racketeering activity in the operation of Defendant First Bank's and Defendant Union Planter's businesses for which treble damages, costs of suit and attorneys' fees are required under 18 U.S.C. § 1964(c).

66. The Individual Defendants, in concert with other First Bank and Union Planters agents or employees, in violation of 18 U.S.C. § 1962(c), conducted the affairs of an enterprise engaged in interstate commerce through a pattern of racketeering activity for which treble damages, costs of the suit and attorneys' fees are required under 18 U.S.C. § 1964(c).

67. The Individual Defendants and Defendants First Bank and Union Planters aided, abetted, counseled, commanded, induced or procured the commission of the violations of the Federal Bank Fraud, Mail Fraud, Wire Fraud and RICO Statutes, and therefore are each liable as principals pursuant to 18 U.S.C. § 2.

WHEREFORE, Plaintiffs demands that judgment be entered against the Defendant First Bank, Union Planters, and the Individual Defendants, for treble the amount of damages incurred by Plaintiffs as a result of the aforesaid scheme to defraud, the costs of this suit, including reasonable attorneys' fees, and such further relief as the Court shall deem just and appropriate.

Count II: RICO Conspiracy

68. Plaintiffs reincorporate by reference paragraphs 1-27 set forth above as though fully set forth herein.

69. Beginning in September 2003 and continuing until the present, Defendants First Bank, Union Planters, the Individual Defendants, Williams, and other individuals known and unknown, being persons employed by and associated with the criminal enterprise described herein, and in furtherance of the enterprise's affairs, or who participated in unlawful activities in furtherance with the enterprise's affairs, unlawfully and knowingly combined, conspired, confederated, and agreed together and with each other to violate Title 18, United States Code, Section 1962 (c), that is, to conduct and participate, directly and indirectly, in the conduct of the affairs of an enterprise through a pattern of racketeering activity, as that term is defined in Title

18, United States Code, Sections 1961 (1) and 1961 (5) consisting of multiple acts of bank fraud (18 U.S.C. §1344), wire fraud (18 U.S.C. § 1343), and mail fraud (18 U.S.C. § 1341), as enumerated above. It was further part of the conspiracy that the Defendants agreed that a conspirator would commit at least two acts of racketeering in the conduct of the affairs of the enterprise.

70. In furtherance of the conspiracy herein described and to accomplish the objects of the conspiracy and to advance a scheme to defraud Mark Wankel, the Defendants and their co-conspirators committed the following overt acts on the dates set forth below.

Overt Acts

71. Plaintiffs reincorporate by reference paragraphs 29-61 set forth above as though fully set forth herein.

72. The actions described in this Count caused Mark and Debra Wankel to incur additional consequential damages in the approximate amount of $126,354 between April 15-May 6, 2004; $36,354 for payments to Union Planters, $50,000 for payments made to American Auto, $30,000 for additional payments made to American Auto, and $10,000 for payments made to Wabash Communications.

73. As a direct result of the conspiracy, Mark and Debra Wankel have been damaged in the approximate amount of $1,357,071.28, plus interest charged, accrued, and or paid.

WHEREFORE, Plaintiffs demand that judgment be entered against the Defendants First Bank, Union Planters, and the Individual Defendants, for treble the amount of damages incurred by Plaintiffs as a result of the conspiracy and the RICO offenses, and the costs of this suit, including reasonable attorneys' fees, and such further relief as the Court shall deem just and appropriate.

Count III—Fraudulent Procurement of Guarantee and Hold Harmless Agreement

74. Plaintiffs reincorporate by reference paragraphs 1-19 and 21-50 set forth above as though fully set forth herein.

75. Mr. Williams' statements to Mr. Wankel to induce him to make the Guarantee and to cover the deficiencies, as well as purchase the Note, and First Bank, Union Planters, and the Individual Defendants' actions to enable and facilitate such misrepresentations, constitute fraud under Illinois Law.

76. First Bank's and the Individual Defendants' nondisclosure of the conclusions that Williams and American Auto were engaged in check kiting constitute material misrepresentations of facts unknown to Mark Wankel, which increased his risks beyond those that he was willing to assume, which renders Mark Wankel's obligation voidable.

77. Due to First Bank's and Williams' nondisclosure of the material facts mentioned in the preceding paragraph, First Bank was able to induce Mark Wankel to make the Guarantee.

78. Mark Wankel reasonably relied on the aforementioned material misrepresentation in connection with the Guarantee, as First Bank was acting "quickly" in inducing Mark Wankel to guarantee Kevin Williams' Note.

79. Mark Wankel declares the Guarantee void.

80. Likewise, Union Planters procured the hold harmless agreement described in paragraph 33 above by material misrepresentation upon which Mark and Debra Wankel justifiably relied.

81. Mark and Debra Wankel declare the April 1, 2004 hold harmless agreement void.

WHEREFORE, Plaintiffs seek compensatory damages for the fraud as well as punitive damages and a declaration that the Guarantee and hold harmless agreements are void and request that the Court provide them with any other relief the Court deems reasonable.

Count IV—Fraud

82. Plaintiffs reincorporate by reference paragraphs 1-19 and 21-50 set forth above as though fully set forth herein.

83. The actions described herein constitute fraud under the common law of the State of Illinois, for which punitive damages are authorized and appropriate.

84. The actions described in this Count caused Mark Wankel to incur additional consequential damages in the approximate amount of $126,354 between April 15-May 6, 2004; $36,354 for payments made to Union Planters, $50,000 for payments made to American Auto, $30,000 for additional payments made to American Auto, and for payments made $10,000 to Wabash Communications.

WHEREFORE, Plaintiffs seek compensatory damages in excess of $1,357,071.28, plus interest charged and or paid for the fraud as well as punitive damages and request that the Court provides them with any other relief the Court deems reasonable.

Respectfully submitted,

/s/Burton H. Shostak

Burton H. Shostak, IL Bar # 6273714
Moline, Shostak & Mehan, LLC
8015 Forsyth Boulevard
St. Louis, Missouri 63105
Telephone: (314) 725-3275
Facsimile: (314) 725-3275

Attorneys for Plaintiffs Mark and Debra Wankel